

REMARKS

Summary of Office Action

Claims 1-38 are pending in this application.

The Examiner said applicants' arguments and claim amendments filed in the April 8, 2009 Reply To Final Office Action do not overcome the prior art of record.

Accordingly, claims 1-38 stand rejected under 35 U.S.C. § 103(a) as being obvious from Hendricks U.S. Patent Application Publication No. 2005/0157217 (hereinafter "Hendricks").

Summary of Applicants' Reply

Applicants have amended independent claims 7, 14, 21, and 36 to more particularly point out and distinctly claim the subject matter that applicants regard as the invention. Support for these amendments is found throughout applicants' application.

No new matter has been added.

Reconsideration of this application in view of the claim amendments and the following remarks is respectfully requested.

Rejections of Claims 1-38 Under 35 U.S.C. § 103(a)

Claims 1-38 were rejected under 35 U.S.C. § 103(a) as being obvious from Hendricks.

These rejections are respectfully traversed.

Hendricks does not disclose or suggest all the limitations recited in the claims.

Independent Method Claims 1, 10, 16, 19, and 36

Each of independent claims 1, 10, 16, 19, and 36 is directed to a method of operating a video-on-demand (VOD) service and requires the VOD service to be accessible to non-subscribers of that VOD service.

A) Hendricks does not disclose or suggest a method of operating a VOD service. Instead, Hendricks discloses methods of operating a near-video-on-demand (“NVOD”) service in connection with a television program delivery system.

NVOD operates very differently than VOD. A VOD service transmits a selected program to a viewer’s set top terminal immediately upon that viewer’s selection of the program (i.e., “on demand”). In contrast, an NVOD service broadcasts a limited number of programs selected by the NVOD provider, not the viewer. Each program is broadcast on multiple channels at staggered start times. When a viewer selects one of the programs, the NVOD service tunes the viewer’s set top terminal to the channel with next scheduled start time. Thus, the viewer either has to wait until the next scheduled start time, or may be tuned in to the program already in progress if the last scheduled broadcast had already begun prior to the viewer’s selection of that program. NVOD is thus not the same as VOD.

As Hendricks discloses, “the same movie may be shown continuously and simultaneously on different channels. Each channel starts the movie at a different time” Paragraph 153; emphasis added.

“In order to allow subscribers to view hit movies ... multiple start times for the same movie are provided. In order to provide the multiple start time service, the same movie must be shown on multiple channels at staggered start times.” Paragraph 302.

“[A] subscriber may access information on a particular movie and ascertain the various start times for that movie.” Paragraph 317. Obviously, this is not “on demand.”

“When the movie’s start time is approaching, the set top terminal 220 will automatically bring the viewer to the correct channel carrying the movie” Paragraph 309.

To further distinguish Hendricks’ NVID system from applicants’ VOD service, Hendricks discloses the following:

“Using several transmission channels, each movie in the library is shown at least once during a one-month period.” Paragraph 317.

“[A] subscriber may tape movies which are shown at inconvenient times for later viewing” (*id.*; emphasis added).

This is precisely a problem that applicants’ VOD service solves – viewers can select and view programs “on demand” – that is, at a time chosen by the viewer.

A VOD service advantageously allows the viewer to decide what programs to view and when to view them (i.e., “on demand”) – unlike NVID services, where the service provider decides what programs to broadcast and when to broadcast them.

The Examiner cited Hendricks’ paragraphs 282, 284, and 288 in support of his assertion that Hendricks discloses a method of operating a VOD service. However, in these paragraphs, Hendricks mentions only in passing that “the system can support ‘movies on demand’” (paragraph 282) and that “the subscriber may choose ... programs on demand (e.g., movies)” (paragraph 284). Hendricks discloses nothing about the operation and/or features of such movies and programs on demand. At the time of applicants’ invention, and more so at the time of Hendricks, there was no industry standard or universally-accepted definition associated

with phrases such as movies on demand or programs on demand. Accordingly, these references as used by Hendricks may still refer to an NVOD service. Thus, it is pure speculation to assume that these passing references to movies and programs on demand refer to the same type of VOD service claimed by applicants.

In sum, Hendricks does not disclose a method of operating a VOD service.

B) Hendricks' does not disclose or suggest that its program delivery system is accessible to non-subscribers of the system.

Hendricks' does not disclose or suggest in any way that its television program delivery system is accessible to non-subscribers of that system. Hendricks is from the outset directed to only subscribers of its television program delivery system. Note, for example, Hendricks' title: "Remote Control Menu Driven Subscriber Access To Television Programming" (emphasis added). Moreover, Hendricks' 32 pages of double-columned specification is replete with references to subscribers of its program delivery system:

"The present invention is a program delivery system which provides subscribers with a user friendly interface to operate and exploit a six-fold or more increase in current program delivery capability." (Paragraph 13, lines 7-11; emphasis added.)

"Subscribers will be able to access the expanded program package and view selected programs" (Paragraph 14, lines 1-2; emphasis added.)

"The delivery system employs ... a set-top terminal in each subscriber's home." (Paragraph 18, lines 1-3; emphasis added.)

"[T]he subscriber may select desired programming through the system's menu-driven scheme" (Paragraph 28, lines 1-3; emphasis added.)

"A subscriber can easily navigate through the menu system" (Paragraph 269, lines 14-15; emphasis added.)

The Examiner cited Hendricks' paragraphs 282, 284, and 288 – however, these paragraphs also make reference to only "subscribers" of the program delivery system:

“[A] subscriber communicates through set top terminal 220”
Paragraph 282; emphasis added.

“[I]ntroductory menu screens ... are displayed on the subscriber’s television. ... The subscriber may choose regular cable television”
Paragraph 284; emphasis added.

“[T]he preferred home menu ... displays ... the standard channel line up ... for selection by the subscriber.” Paragraph 288; emphasis added.

Hendricks does not disclose or suggest in any way what access, if any, a non-subscriber has to its program delivery system.

Hendricks does not disclose or suggest how a non-subscriber of the program delivery system can become a subscriber of the program delivery system.

Still further, the Examiner acknowledged that Hendricks “is silent as to specific use of the phrase ‘non-subscriber’ in the disclosure” (Office Action, page 4; emphasis added).

Hendricks is not only silent as to any “specific” use of the phrase “non-subscriber,” but is completely silent as to ANY use of the phrase “non-subscriber” -- including any use of any synonym of the phrase “non-subscriber” -- either generally, specifically, or otherwise, because Hendricks’ system is plainly directed to ONLY subscribers.

To support his assertion that Hendricks discloses non-subscriber access to its program delivery system, the Examiner cited Hendricks’ FIGS. 30-32. These FIGS. illustrate the process of a subscriber of the program delivery system ordering a specialty channel within the program delivery system and receiving the displayed message, “Thank you for subscribing! You are joining the channel in progress” (FIG. 32). The Examiner also cited FIG. 33 which, if the subscriber has already ordered the specialty channel, displays the message, “You are a current subscriber. Thank you! ... joining now in progress.”

A subscriber of Hendricks' program delivery system who does not order a specialty channel is not a non-subscriber of Hendricks' program delivery system.

FIGS. 30-33 do not, therefore, support the assertion that Hendricks' television program delivery system is accessible to non-subscribers of that system.

In sum, Hendricks does not disclose or suggest in any way a method of operating a VOD service or that its television program delivery system is accessible to non-subscribers of that system.

Accordingly, the limitation in claims 1, 10, 16, 19, and 36 requiring a VOD service to be accessible to non-subscribers of that VOD service is not disclosed or suggested in Hendricks.

If the Examiner asserts that it would have been obvious to modify the NVOD service of Hendricks to be a VOD service, and that it would have been further obvious to modify that VOD service to allow non-subscribers of that VOD service to have access, applicants respectfully request the Examiner to provide documentary evidence in support of those assertions in accordance with MPEP § 2144.03(C).

Independent Method Claims 1, 10, 16, and 19

Independent claim 1 also requires the following limitation:

preventing transmission of one of said video programs to said viewing station when said second signal indicates a selection of said one video program by one of said non-subscribers;

Independent claim 10 also requires the following limitation:

preventing display on said display of one of said video programs selected by one of said non-subscribers;

Independent claim 16 also requires the following limitation:

preventing display on said display of any one of said video programs selected from said lists by one of said non-subscribers;

Independent claim 19 also requires the following limitation:

preventing transmission of one of said video programs to said viewing station when said comparing indicates that said identifier is not on said list of identifiers and said selection corresponds to said one video program;

Hendricks does not disclose or suggest any of these limitations.

In particular, Hendricks does not, as discussed above, disclose any details of a VOD service.

As also discussed above, Hendricks does not disclose that non-subscribers have access to its program delivery system.

Moreover, Hendricks does not disclose or suggest that a non-subscriber of its program delivery system can select a video program for viewing. Thus, in regard to claim 1, for example, Hendricks does not disclose a second signal indicating a selection of a video program by a non-subscriber of Hendricks' program delivery system.

Because Hendricks discloses an NVOD service, Hendricks' program delivery system continuously transmits NVOD programming to viewing stations regardless of whether any particular subscriber selects the NVOD programming or not. Upon a subscriber selecting an NVOD program, Hendricks' system tunes the subscriber's set top terminal to the particular channel carrying the selected NVOD program.

Hendricks' system does not prevent transmission or display of any program in response to a selection of that program by a non-subscriber.

In support of this rejection, the Examiner cited 50 drawing sheets (FIGS. 15-18, 30-51, 112, and 114) and 33 paragraphs (paragraphs 284-294, 296-302, 316, 317, 330-336, and 353-358) spread across 8 pages (pages 19-26) of Hendricks – however, none of this discloses or suggests preventing the transmission or display of a video program selected by a non-subscriber of Hendricks’ program selection system.

Instead, the cited drawings and paragraphs support applicants’ argument that Hendricks is directed to an NVOD system for subscribers only.

In particular, paragraphs 284-293 refer to introductory and home “menu screens that are displayed on the subscriber’s television.” Paragraph 284; emphasis added. “[T]he preferred home menu 1010 ... displays both the standard channel line up and the programming on demand icons for selection by the subscriber.” Paragraph 288; emphasis added. As discussed above, the reference to “programming on demand” may refer to NVOD programs.

Paragraph 294 refers only to major menus, such as “hit movies.”

Paragraphs 297 and 298 refer to menus being consistent and following a pattern in order to be user-friendly.

Paragraphs 302, 316, and 317 describe an NVOD service and its related menus. As discussed above, programs are broadcast on multiple channels at staggered times – regardless of whether or not a subscriber selects any of the programs -- this is not a VOD service as claimed by applicants.

Paragraphs 330 to 336 “relate to the ordering of specialty channels” (paragraph 330; emphasis added). As discussed above, Hendricks offers specialty channels, such

as, for example, “a science fiction channel” (paragraph 336), to subscribers willing to pay extra for such a channel.

As Hendricks itself acknowledged, this “is different ... in that individual programs are not ordered but instead channels are subscribed to” (paragraph 330; emphasis added).

Upon agreeing to pay, “the subscriber is allowed to join the channel in progress” (paragraph 332) – in other words, Hendricks’ program delivery system continuously transmits the specialty channel to viewing stations regardless of whether any particular subscriber orders the channel or not.

No transmission of any program is prevented because a subscriber does not order a specialty channel.

Furthermore, even if a subscriber of the system is considered a “non-subscriber of a specialty channel,” Hendricks does not prevent transmission or display of any program upon that “non-subscriber” ordering a specialty channel. Indeed, when a “non-subscriber” orders a specialty channel, the “non-subscriber” “instantly” (as acknowledged by the Examiner) becomes a “subscriber” and is thus able to view the specialty channel – again, Hendricks’ does not prevent transmission or display of any program selected by such a “non-subscriber.”

Paragraphs 353 to 355 refer to a high definition television (HDTV) feature. Similar to specialty channels, “the subscriber ... will either receive ... a suggestion to order the system, or a text note that he is a current subscriber and a listing of the currently available program selections in HDTV [T]he subscriber ... may be allowed to join one of the programs in progress” (paragraph 353; emphasis added).

As with specialty channels, Hendricks' program delivery system continuously transmits HDTV programming to viewing stations regardless of whether any particular subscriber orders the HDTV feature or not. Upon ordering, Hendricks' system tunes the set top terminal to the particular channel carrying the HDTV programming.

Hendricks does not, however, prevent transmission of any HDTV programming just because a subscriber does not order HDTV.

Paragraph 356 refers to TV guide services that "list[] programs available on network schedules."

Paragraph 357 refers to a record feature wherein a "viewer may choose to record the selected program on his VCR." Again, applicants' VOD service advantageously eliminates the need for such a record feature as it relates to Hendricks' inconvenient broadcast times.

And paragraph 358 refers to a "broadcast TV menu option."

None of the 33 paragraphs cited by the Examiner describes any occurrence of a program selected by a non-subscriber of the program selection system.

None of the 33 paragraphs cited by the Examiner describes any occurrence of a signal that prevents transmission of a program selected by a non-subscriber of the program selection system.

Thus, none of the 33 paragraphs cited by the Examiner supports the assertion that Hendricks prevents the transmission or display of a video program to a set top terminal when a signal indicates a selection of the program by a non-subscriber of Hendricks' program delivery system.

In sum, Hendricks does not disclose or suggest in any way that its television program delivery system prevents the transmission or display of a program selected by a non-subscriber of its program delivery system.

Accordingly, the limitations of claims 1, 10, 16, and 19 requiring that transmission or display of a video program selected by a non-subscriber of a VOD service be prevented are not disclosed or suggested by Hendricks.

If the Examiner asserts that it would have been obvious (1) to modify the NVOD service of Hendricks to be a VOD service, (2) to further modify that VOD service to allow non-subscribers of that VOD service to have access, and (3) to still further modify the VOD service to prevent transmission or display of video programs selected by non-subscribers, applicants respectfully request the Examiner to provide documentary evidence in support of such assertions in accordance with MPEP § 2144.03(C).

Independent Claims 7, 14, 21, and 36

Amended independent claim 7 requires the following limitation:

a multiple processor computer that allows said list and said previews to be transmitted on demand to ... non-subscribers of said service without said non-subscribers having to become subscribers ...; (emphasis added)

Amended independent claims 14 and 21 require the following limitation:

a first computer programmed to allow said lists and said previews to be transmitted on demand to ... non-subscribers of said service without said non-subscribers having to become subscribers ...; (emphasis added)

Amended independent claim 36 requires the following limitation:

displaying on said display one of said segments received in response to a selection of said one segment by one of said

non-subscribers without said one non-subscriber having to become a subscriber;

Hendricks does not disclose or suggest these limitations.

Applicants' VOD service allows non-subscribers of the service to view a list of programs and to select and view segments/previews of those programs on demand -- without having to become subscribers.

As discussed above, Hendricks does not disclose any details of a VOD service.

As also discussed above, Hendricks does not disclose that non-subscribers have access to its program delivery system.

Moreover, Hendricks does not disclose or suggest that its program delivery system provides program lists or program previews on-demand to non-subscribers of the program delivery system.

In support of these rejections, the Examiner cited Hendricks' paragraphs 186, 264, 280, 281, and 284-286. Paragraph 186 refers to a "menu driven program selection system ...to allow the subscriber to choose a program." "The final choice in the series of menus will identify one particular channel and one time for activation of that channel. Armed with a channel and activation time the set top terminal 220 can display the selected program" Each program is assigned an alpha-numeric code that "identifies ... its transmission time(s)" (emphasis added).

Thus, paragraph 186 refers to a broadcasting service where the selected program is currently being broadcast or is scheduled to be broadcast on a particular channel – regardless of whether any individual subscriber selects that particular program or not.

Hendricks responds to a signal from a subscriber selecting a program by tuning the subscriber's set top terminal to the channel carrying, or scheduled to carry, that program:

“When the movie’s start time is approaching, the set top terminal 220 will automatically bring the viewer to the correct channel carrying the movie” Paragraph 309.

If the subscriber does not select the program, the program will still be transmitted – the subscriber’s set top terminal just will not be tuned to that channel.

Hendricks does not transmit the program in response to an on-demand selection of that program by a non-subscriber.

The transmission of programs in Hendricks’ system is pre-determined by the service provider.

Also note that paragraph 186 refers to programs, and not segments/previews of programs as required by claims 7, 14, 21, and 36.

Paragraph 264, also cited by the Examiner, merely describes the buttons on a remote control device.

Paragraphs 280 and 281 describe numerous types of menus available to the subscriber:

“[T]he introductory menu 1000 followed by the home menu 1010 is the preferred sequence of on-screen displays.”

“[T]he home menu 1010 provides a choice of ten major menus”

“[T]he subscriber is then provided with a second submenu 1058 describing the program that the subscriber has selected.”

“[T]he subscriber may now confirm his program choice and receive a confirmation submenu”

Paragraphs 284-286 describe “examples of introductory menu screens that are displayed on the subscriber’s television” (paragraph 284).

Nothing disclosed in the cited paragraphs or FIGS. supports the assertion that Hendricks' transmits a segment/preview of a program in response to an on-demand selection of that segment/preview by a non-subscriber of Hendricks' program delivery system.

Nothing disclosed in the cited paragraphs or FIGS. supports the assertion that Hendricks' displays one of the segments (e.g., previews) received in response to a selection of that segment by a non-subscriber of Hendricks' program delivery system.

Accordingly, the limitations of amended claims 7, 14, and 21 requiring a computer of a VOD service to allow program lists and program previews to be transmitted on demand to non-subscribers of the VOD service without the non-subscribers having to become subscribers are not disclosed or suggested in Hendricks.

Similarly, the limitation of amended claim 36 requiring the display of one of the segments received in response to a selection of that segment by one of the non-subscribers without the one non-subscriber having to become subscriber is also not disclosed or suggested in Hendricks.

If the Examiner asserts that it would have been obvious (1) to modify the NVOD service of Hendricks to be a VOD service, (2) to further modify that VOD service to allow non-subscribers of that VOD service to have access, and (3) to still further modify the VOD service to allow program lists and program previews to be transmitted on demand to non-subscribers of the VOD service without the non-subscribers having to become subscribers, applicants respectfully request the Examiner to provide documentary evidence in support of such assertions in accordance with MPEP § 2144.03(C).

*

*

*

In sum, Hendricks does not in any way render obvious applicants' invention as defined in independent claims 1, 7, 10, 14, 16, 19, 21, and 36, because all the claim limitations are not present in or suggested by Hendricks, and the Examiner has not cited any documentary evidence to show that modifying Hendricks to have those claim limitations would be obvious.

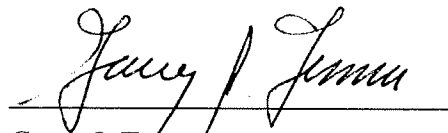
For at least these reasons, dependent claims 2-6, 8, 9, 11-13, 15, 17, 18, 20, 22-35, 37, and 38, which depend directly or indirectly from the independent claims, are also not obvious from Hendricks (i.e., dependent claims are patentable if their independent claim is patentable).

Accordingly, applicants respectfully request that the rejections of claims 1-38 under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

The foregoing demonstrates that claims 1-38 are allowable. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Garry J. Tuma", is written over a horizontal line.

Garry J. Tuma
Registration No. 40,210
Attorney for Applicants

JONES DAY
Customer No. 20583
222 East 41st Street
New York, New York 10017
(212) 326-3939